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Intellectual Property Administration  
P.O. Box 272400  
Fort Collins CO 80527-2400

In re Application of  
Paul Clinton Coffin, et al.  
Application No. 09/938,155  
Filed: August 23, 2001  
For: **SYSTEMS AND METHODS FOR PROVIDING  
AUTOMATIC ACCESS TO DATA MEDIA IN A  
DATA STORAGE SYSTEM**

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DECISION ON PETITION  
:  
TO WITHDRAW HOLDING OF  
:  
ABANDONMENT  
:

This is a decision on the Petition to Withdraw Holding of Abandonment pursuant to MPEP §711.03(c) and 37 CFR §1.181(a), filed November 19, 2004. No fee is required.

This application was held abandoned for failure to timely submit a response to the non-final Office action mailed December 23, 2003. A Notice of Abandonment was mailed September 29, 2004.

Petitioner states that the non-final Office action was not received. The petition was accompanied by a declaration from a Maria Carroll, Legal Administrator for Hewlett-Packard Corporate Legal Department, and also a copy of a mail log.

Pursuant to MPEP § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating:

- (a) that the Office communication was not received by the practitioner; and
- (b) personally attesting to a search of the file jacket and docket records indicates that the Office communication was not received;

In addition, the petition must include a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

It is noted that neither the petitioner David Rodack or Maria Carroll are listed as having power of attorney in the subject application, according to Office records. Therefore, the petition does not comply with the requirements of a successful petition to withdraw the holding of abandonment

due to the lack of a statement from the Practitioner attesting to a personal search of the file jacket and docket records and indicating that the office communication was not received.

Moreover, there is no evidence of record that Petitioner was ever granted power of attorney in the application. Therefore, Petitioner is not the practitioner of record in which to make the requisite statement.


In addition, the correspondence address of the Petitioner is not the correspondence address of record. There is no evidence of record whereby the correspondence address was changed to the Petitioner's address. Therefore, Petitioner also has failed to provide evidence supporting non-receipt of the Office action at the correspondence address of record.

Accordingly, the petition is **DENIED**.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision, be executed by a practitioner of record and include the information as outlined above. Alternatively, practitioner may file a petition to revive under 37 CFR §1.137.

A courtesy copy of this decision is being mailed to Petitioner's address below. However, all future communications will continue to be mailed to the address set forth above.

The application is being forwarded to the Technology Center's file repository.



Dwayne D. Bost  
Special Program Examiner  
Technology Center 2600  
Communications

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